

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

**SERTA SIMMONS BEDDING, LLC,
et al.,**

Debtors.¹

§ Chapter 11

§ Case No. 23-90020

§ (Jointly Administered)

**SERTA SIMMONS BEDDING, LLC,
et al.,**

§ Adversary Proc. No. 23-09001

Plaintiffs,

v.

**AG CENTRE STREET PARTNERSHIP,
et al.,**

Defendants.

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**MOTION FOR ENTRY OF AN ORDER AUTHORIZING SERTA SIMMONS
BEDDING, LLC TO FILE ITS PRE-TRIAL MEMORANDUM OF LAW
CONTAINING CONFIDENTIAL INFORMATION UNDER SEAL**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Dawn Intermediate, LLC (6123); Serta Simmons Bedding, LLC (1874); Serta International Holdco, LLC (6101); National Bedding Company L.L.C. (0695); SSB Manufacturing Company (5743); The Simmons Manufacturing Co., LLC (0960); Dreamwell, Ltd. (2419); SSB Hospitality, LLC (2016); SSB Logistics, LLC (6691); Simmons Bedding Company, LLC (2552); Tuft & Needle, LLC (6215); Tomorrow Sleep LLC (0678); SSB Retail, LLC (9245); and World of Sleep Outlets, LLC (0957). The Debtors' corporate headquarters and service address for these chapter 11 cases is 2451 Industry Avenue, Doraville, Georgia 30360.

Serta Simmons Bedding, LLC (“**Serta Simmons Bedding**” or the “**Company**”) and its debtor affiliates in the above-captioned chapter 11 cases (these “**Chapter 11 Cases**”), as debtors and debtors in possession (collectively, the “**Debtors**”)² respectfully represents as follows in support of this motion (this “**Motion to Seal**”):

BACKGROUND

1. A hearing on the adversary proceeding styled as *Serta Simmons Beddings, LLC, et al. v. AG Centre St. Partnership, et al.*, Case No. 23-09001-ADV (the “**Adversary Proceeding**”) and a hearing to confirm the *Modified First Amended Joint Chapter 11 Plan of Serta Simmons Bedding, LLC and Its Affiliated Debtors*, dated May 9, 2023 (Docket No.) (including any exhibits and schedules thereto and as may be modified, amended, or supplemented from time to time in accordance with the terms thereof, the “**Plan**”) in the Chapter 11 Cases are scheduled to commence on May 15, 2023 at 9:30 a.m. (Central Time).

2. In connection with these proceedings, the Company, on behalf of all Plaintiffs in the Adversary Proceeding and on behalf of all Debtors, filed a pre-trial memorandum of law (the “**Pre-Trial MOL**”) under seal, with this Motion to Seal the unsealed Pre-Trial MOL that contains information that has previously been designated as confidential or highly confidential material under the Stipulated Protective Order entered in the Adversary Proceeding (ECF No. 74).

3. The Stipulated Protective Order provides in relevant part that “[a]ll pleadings, memoranda supporting motions, briefs, deposition transcripts, discovery requests and responses, exhibits, and other documents that quote information from Confidential Information or Highly Confidential – Attorneys’ Eyes Only Information and the Confidential Information and Highly

² Capitalized terms not defined herein have the meaning ascribed to them in the Amended Adversary Complaint. *See* Docket No. 38.

Confidential – Attorneys’ Eyes Only Information if filed with the Court, shall be redacted from the Court filing (either by redacting the relevant text of the submission or redacting the entirety of any exhibit that has been designated as containing Confidential Information or Highly Confidential – Attorneys’ Eyes Only Information) or filed under seal pursuant to the Court’s rules governing sealed documents, unless the Designating Party consents to such Confidential Information or Highly Confidential – Attorneys’ Eyes Only Debtors Information being filed publicly in writing.” Stipulated Protective Order § 4.2(E).

4. Consistent with its obligations under the Stipulated Protective Order, the Company seeks to file the Pre-Trial MOL under seal, which contains information that was designated as confidential material pursuant to the Stipulated Protective Order.

5. The parties have agreed to the extent an exhibit filed under seal is publicly used at the hearings on the Adversary Proceeding or the confirmation of the Plan, such exhibit will at that time be unsealed (subject to paragraph 6 below).

6. The parties have agreed to meet and confer as necessary prior to trial to discuss whether there are any exhibits whose sealing may need to be maintained despite their use in either proceeding.

JURISDICTION

7. This Court has jurisdiction to consider this motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

8. By this Motion to Seal, pursuant to sections 105(a) of the Bankruptcy Code, Bankruptcy Rule 9018, and Rule 9037-1 of the Bankruptcy Local Rules for the United States

Bankruptcy Court for the Southern District of Texas, Serta Simmons Bedding requests: (i) authority to file entirely under seal the Pre-Trial MOL; (ii) direction that the Pre-Trial MOL remain under seal and not be made available to anyone unless later unredacted; and (iii) related relief.

9. A proposed form of order granting the relief requested herein is attached hereto (the “**Proposed Order**”).

RELIEF REQUESTED SHOULD BE GRANTED

10. Section 105(a) of the Bankruptcy Code codifies the Court’s inherent equitable powers and empowers it to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

11. Bankruptcy Rule 9018 sets forth the procedures by which a party may obtain a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018 provides, in relevant part, that “[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires [] to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information.” FED. R. BANKR. P. 9018.

12. Bankruptcy Local Rule 9037-1(c) provides that “[a] motion, reply or other document may initially be filed under seal if the filing party simultaneously files a motion requesting that the document be maintained under seal.” *See* Local Rule 9037-1.

13. The Debtors respectfully request that, pursuant to Sections 105 of the Bankruptcy Code, Bankruptcy Rule 9037, and Bankruptcy Local Rule 9037-1, the Court permit the Pre-Trial MOL be filed under seal, as set forth above.

PREVIOUS RELIEF GRANTED

14. The Court in this action has already granted prior requests to seal exhibits and memoranda of law similar to those the Debtors seek to seal in the instant motion where Defendants sought to seal exhibits that were similarly designated as confidential material under the Stipulated Protective Order. *See Serta Simmons Bedding, LLC et al. v. AG Centre Street Partnership, L.P., et al.*, No. 23-09001 (DRJ) (S.D. Tex. Bankr.), ECF Nos. 105, 106.

CONCLUSION

WHEREFORE, the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief, at law or in equity, as the Court may deem just and appropriate.

Dated: New York, New York
May 14, 2023

Respectfully submitted,

/s/ David J. Lender

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CERTIFICATE OF SERVICE

I hereby certify that, on May 14, 2023, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas, and will be served as set forth in the Affidavit of Service to be filed by the Debtors' claims, noticing, and solicitation agent.

/s/ Gabriel A. Morgan

Gabriel A. Morgan